B. HOW TRUSTS AFFECT ELIGIBILITY FOR MEDICAL PROGRAMS

WAC 388-561-0100 Trusts.

(1) The department determines how trusts affect eligibility for medical programs.

(2) The department disregards trusts established on or before April 6, 1986, for the sole benefit of a client who lives in an intermediate care facility for the mentally retarded (ICFMR).

(3) For trusts established on or before August 10, 1993 the department counts the following:

(a) If the trust was established by the client, client's spouse, or the legal guardian, the maximum amount of money (payments) allowed to be distributed under the terms of the trust is considered available income to the client if all of the following conditions apply:

(i) The client could be the beneficiary of all or part of the payments from the trust;

(ii) The distribution of payments is determined by one or more of the trustees; and

(iii) The trustees are allowed discretion in distributing payments to the client.

(b) If an irrevocable trust doesn't meet the description under section (3)(a), then it is considered either:

(i) An **unavailable** resource if the client established the trust for a beneficiary other than the client or the client's spouse;

(ii) An **available** resource in the amount of the trust's assets that:

(A) The client could access; or

(B) The trustee of the trust distributes as actual payments to the client; and the department applies the transfer of asset rules of WAC 388-513-1365.

(c) If a revocable trust doesn't meet the description under section (3)(a):

(i) The full amount of the trust is an available resource of the client if the trust was established by:

(A) The client;

(B) The client's spouse, and the client lived with the spouse; or

(C) A person other than the client or the client's spouse only to the extent the client had access to the assets of the trust.

(ii) Only the amount of money actually paid to the client from the trust is an available resource when the trust was established by:

(A) The client's spouse, and the client did not live with the spouse; or

(B) A person other than the client or the client's spouse; and

(C) Payments were distributed by a trustee of the trust.

(iii) The department considers the funds a resource, not income.

(4) For trusts established on or after August 11, 1993:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed to the trust by the client are available to the client when part of the trust assets were contributed by any other person.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of distributions from the trust.

(d) For a revocable trust established as described under (4)(a) of this section:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust other than payments described under (4)(d)(ii) of this subsection are a transfer of client assets.

(e) For an irrevocable trust established as described under (4)(a) of this section:

(i) Any part of the trust from which payment can be made to or for the benefit of the client is an available resource. When payment is made from such irrevocable trusts, we will consider the payments as:

(A) Income to the client when payment is to or for the client's benefit; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(ii) A trust from which a payment cannot be made to or for the client's benefit is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established, or

(B) The client is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(5) Trusts established on or after August 11, 1993 are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC 388-503-0510) and the trust:

(i) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

(ii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, up to the amount of Medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC 388-503-0510) and the trust:

(i) Is managed by a nonprofit association which:

(A) Maintains separate accounts for each trust beneficiary; and

(B) May pool such separate accounts only for investment and fund management purposes; and

(C) Stipulates that either:

(I) The state will receive all amounts remaining in the client's separate account upon the death of the client, up to the amount of Medicaid spent on the client's behalf, or

(II) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(6) The Department considers payments made from trusts in subsection (5) to be unearned income.

(7) The department will only count income from trusts and not the principal if:

(a) The beneficiary has no control over the trust; and

(b) It was established with funds of someone other than the client, spouse or legally responsible person.

(8) This section does not apply when a client establishes that undue hardship exists.

(9) WAC 388-513-1365 applies when the department determines that a trust or a portion of a trust is a transfer of assets.

CLARIFYING INFORMATION

1. If a client or financially responsible person creates a special needs trust for himself (the client) with his own funds, we will count it. For us not to count it, it must be set up as a pooled trust and must be managed by a non-profit association with a separate account for the client.

   EXAMPLE (Subsection (3)(a))

   In 1990, Patti's husband established an irrevocable trust for her in case of his death. He died in 1992, leaving her Uncle John as trustee. According to the terms of the trust Uncle John has discretion to distribute up to $20,000 per year to Patti if he feels she needs it. Uncle John thinks that Patti wastes her money and decides he will allow her $400 per month from the trust.

Patti has been to the doctor and was told that she needs an operation. She cannot afford it and has applied for Medicaid for herself and her 2 children. Even though Uncle John refuses to give Patti the money, the department must consider a resource available to Patti in the amount of $20,000 less $400 per month payments that have been paid out so far this year. This is because of the way the trust was worded.

EXAMPLE 1 (Subsection (3)(b))

In 1992, Mark and Darci established a $100,000 irrevocable trust for Darci's sister, Martha, payable beginning in the year 2000 at $20,000 per year to help Martha with college expenses. Now, Mark needs medical help due to a car accident and he has no medical or car insurance to help pay for his care. The department considers the entire trust is an unavailable resource to Mark and Darci.

EXAMPLE 2

Same situation as Example 1 EXCEPT there is a clause in the above trust that states Mark and/or Darci could access up to $25,000 of the trust in case of hardship. Now the department must consider a $25,000 available resource when determining eligibility for medical, depending on whether their current need meets the definition of hardship in the trust.

EXAMPLE (Subsection (3)(c)(i))

David and Stella were married in 1989 and separated in 1992. They haven't lived together since 1992, each keeps one of the 2 children and they are still legally married. At the time of the marriage, Stella set up a revocable trust with David as beneficiary, giving him $200 per month income and $100,000 at age 65. David now needs surgery and has applied for medical benefits. The department must consider the full amount of the trust as an available resource to David because he and Stella were living together at the time the trust was set up.

EXAMPLE (Subsection (3)(c)(ii))

Same example as above, **except** Stella set up the trust in 1992 after she and David separated, giving him $10,000 in January of each year as a type of support for him and their child. In this case, only the actual amount paid to David, the $10,000, is available to him. If it has been paid to him already this year and is gone, the department counts nothing the rest of this year. If it has not been paid yet or David still has the distribution, the department must count it as a resource.

The differences between sections 3(c)(i) and 3 (c)(ii) revolve around who set up the trust and the circumstances at that time.

2. A client has no control over the establishment of a testamentary trust, so the department counts only the income received. For example:

   EXAMPLE

   Uncle Joe died last week and left his estate of $50,000 in a testamentary trust to Billy. Billy finds out about this at the reading of the will. According to the trust set up by Uncle Joe, Billy will receive $500 per month until the funds are used up. The department will count only the $500 per month income that Billy receives. He does not control the $50,000 left to him in the trust.

3. Assets that are willed to a client, and the client then uses the assets to establish a trust, are considered to be a resource of the client. The client has control over the assets.

   EXAMPE

   Uncle Joe died last week and left $50,000 to Billy. Billy puts the money into a trust so that he will not spend it all right away. The trust is managed by his bank and gives him $500 per month income. Billy had control of the $50,000 and chose to put it into a trust. We count the entire trust amount of $50,000 as an available resource.

4. In considering distributions from trusts, remember that distributions do not need to be only in cash. For example, a distribution of 1/10th of a piece of property also has a value and must be considered. When you know the value of the entire piece of property, you can determine the value of the part that was distributed.

Trust type and Comments	**Whose Funds**	**Beneficiary**	**Available Resource**	**Income**
Testamentary	Deceased person	Client	No	Yes – payments actually made
Prior to 8/11/93 Revocable Or Irrevocable	Client Spouse Legal Guardian	Client – at least partially	Yes, the largest amount allowed by trust Whatever is not allowed to be distributed is an **unavailable resource**	Yes – payments allowed to be made
Prior to 8/11/93 Irrevocable	Client	Someone other than client or spouse	Yes	
Prior to 8/11/93 Irrevocable (Client can access some of the funds)	Client	Someone other than client or spouse	Yes, amount client has access to	Yes, amount actually distributed by trustee to the client
Prior to 8/11/93 Revocable	Client or spouse if client was living with spouse, Other person to the extent client has access to the funds	Client or spouse	Yes, full amount of trust	
Prior to 8/11/93 Revocable	Client's spouse if client was not living with spouse, Other person if distributed by a trustee	Client	Yes, amount of money actually paid to client	No

<table>
<tr><th>Trust type and Comments</th><th>Whose Funds</th><th>Beneficiary</th><th>Available Resource</th><th>Income</th></tr>
<tr><td>Special Needs
*stipulates DSHS estate recovery</td><td>Parent, Court, Grandparent Legal Guardian</td><td>Disabled client under 65</td><td>No</td><td>Yes – payments made</td></tr>
<tr><td>Pooled
*stipulates DSHS estate recovery</td><td>Client, Parent, Court, Grandparent, Legal Guardian</td><td>Disabled client any age</td><td>No</td><td>Yes – payments made</td></tr>
<tr><td rowspan="2">After 8/10/93 Revocable

(Payments made to/for anyone else is transfer of resource)</td><td rowspan="2">Client, spouse, someone legally acting on behalf of client or spouse</td><td>Client</td><td>Yes – full amount of trust.</td><td>Yes – payments to or for the benefit of the client</td></tr>
<tr><td colspan="3">** only assets contributed by the client are available to client if any assets were contributed by anyone else</td></tr>
<tr><td>After 8/10/93 Irrevocable

(Payments made to/for anyone else is transfer of resource)</td><td>Client, spouse, someone legally acting on behalf of client or spouse</td><td>Client</td><td>Yes - wherever payments can be made to/for client</td><td>Yes - payments to or for the benefit of the client</td></tr>
<tr><td>After 8/10/93
*stipulates DSHS estate recovery</td><td>Parent, Court, Grandparent, Legal Guardian</td><td>Disabled client under 65</td><td>No</td><td>Yes - payments made</td></tr>
<tr><td>After 8/10/93 stipulates DSHS estate recovery

(Non-profit agency as trustee, separate acct for each beneficiary)</td><td></td><td>Disabled client whatever age</td><td>No</td><td>Yes - payments made</td></tr>
<tr><td>Sole Benefit</td><td>For client in ICFMR prior to 4/ 7/86: Department completely disregards</td><td></td><td></td><td></td></tr>
</table>

WORKER RESPONSIBILITIES

1. Obtain a copy of the trust and/or supporting documents listing the investments and distributions from the client, trustee, or attorney.
2. Review the documents to determine:
   a. The type of trust;
   b. The date the trust was established;
   c. Whose assets were used to create the trust;
   d. Who is the beneficiary;
   e. The value of the trust when it was created;
   f. What disbursements can be made from the trust principal or proceeds; and
   g. Any special provisions.
3. Verify:
   a. The current value of the trust;
   b. The actual disbursement amounts paid from the trust;
   c. The dates of each disbursement; and
   d. To whom the disbursements were paid.

ACES PROCEDURES

1. If a trust is exempt or disregarded, document on the (REMA) screen behind the RES1 screen, explaining:
   a. The type of trust;
   b. Date it was established;

   c. Whose assets were used to create it;

   d. Name the beneficiary; and

   e. Give reason for not counting it.

2. If a trust or a portion of a trust is counted as a resource:

   a. Enter the appropriate Liquid Resource Type code on the RES1 screen (see F1);

   b. Enter the amount of resource that is counted and how the amount was verified;

   c. Under Institution Name, list the type of trust and/or trustee name; and

   d. In REMARKs behind the RES1 screen, be sure to identify the trust using the elements from subsections 2 and 3 in Clarifying Information above.

3. If a transfer of resources has taken place, enter the information in the TRAN screen:

   a. Determine the amount of transfer and enter, using the appropriate resource type code (see F1); and

   b. For a long-term care client follow WAC 388-513-1365.

4. If payments made to or on behalf of the client are considered income, enter the information on the UNER screen using the correct codes (see F1) and adding the REMARKS behind the screen.